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No. 83-233

In the Supreme Court

OF THE

United States

OCTOBER TERM 1983

COLORADO RIVER INDIAN TRIBES,
Petitioner,

vs.

GERALD ARANSON, et al.,
Respondents.

SUPPLEMENTAL APPENDICES

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United States Court of Appeals
For the Ninth Circuit

No. 77-2295

United States of America,
Plaintiff-Appellee,

v.

Gerald Aranson, et al.,
Defendants-Appellants.

[Filed May 13, 1983]

ORDER

Before: TRASK and SNEED, Circuit Judges, and EAST*, District Judge

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

*Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

Appendix E

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United States District Court
Central District of California

No. 72-1621-R Civil

United States of America,
Plaintiff,

v.

Gerald Aranson, et al.,
Defendants.

[Filed Feb. 11, 1977]

JUDGMENT

This matter having regularly come before the court, the court having considered the records and files herein, and the court having made its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The plaintiff, United States of America, is the owner in trust for the Colorado River Indian Tribes of the real property and premises lying westerly of the course of the Colorado River, described as follows:

The lands as shown on the Bureau of Land Management survey of Township 4 North, Range 22 West, Gila and Salt River Meridian, Arizona and California, accepted July 9, 1974, and officially filed September 25, 1974.

Fractional Sections 3, 4, 8, 9, 10, 11, 14, 15, 16, 17 and 21, Township 4 North, Range 22 West, Gila and Salt River Base and Meridian.

2. The title to said lands is quieted in plaintiff and the possession by the defendants, and each of them, of said property is, and has been, without any right, title or interest therein;

3. Plaintiff recover possession of said real property and premises wrongfully occupied by the defendants;

4. The defendants forthwith remove themselves and all personal belongings from said real property and premises, wrongfully occupied by them;

5. The defendants may not and shall not in any manner interfere with plaintiff's right to administer, possess, and control said real property and premises following the entry of this judgment;

6. The defendants cease and desist from trespassing on said real property and premises following the entry of this judgment;

7. Plaintiff shall have and recover of defendants Jared C. John, Jr., Alice B. John, Rancho Del Juan, Inc., and Neil John, and each of them, the sum of $44,500.00.

8. Plaintiff shall have and recover of defendant Palo Verde Irrigation District the sum of $9,800.00.

9. Plaintiff shall have and recover its costs in the sum of $....., against the defendants except the State of California and except defendants Arizona Farmers Production Credit Association; the Federal Land Bank of Berkeley; Northwestern Mutual Life Insurance Company; Desert Ginning Company, Inc., an Arizona Corporation; Los Angeles Period Furniture Company, Inc.; Julius Fligelman, and Bank of America National Trust and Savings Association.

DATED: This 10th day of February, 1977.

/s/ MANUEL L. REAL
United States District Judge

Presented by:

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Appendix F

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United States District Court
Central District of California

No. 72-1621-R Civil

United States of America,
Plaintiff,

v.

Gerald Aranson, et al.,
Defendants.

[Filed Feb. 11, 1977]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled case came on regularly for trial commencing on November 3, 1976, and continuing thereafter on November 4, 5, 15, 16 and 17, 1976, before the Honorable

Manuel L. Real, United States District Court Judge, sitting without a jury. Plaintiff appeared by William D. Keller, United States Attorney, Central District of California, Frederick M. Brosio, Jr., Assistant United States Attorney, Chief, Civil Division, and Donald J. Merriman, Assistant United States Attorney, by Donald J. Merriman; defendant, State of California was represented by Evelle J. Younger, Attorney General, and Jerold A. Krieger, Deputy Attorney General, by Jerold A. Krieger; defendant, Palo Verde Irrigation District was represented by Roy H. Mann, Esquire; all other defendants were represented by Donald D. Stark, Esquire, and Frederick H. Kranz, Jr., Esquire. The court having considered the oral and documentary evidence offered and received at the trial, and the argument of counsel, and being fully advised in the premises makes the following findings of fact and conclusions of law:

PREFACE

This action was brought by the United States of America, as trustee for the benefit of the Colorado River Indian Tribes, to quiet title to certain lands along the Colorado River within Riverside County, California, alleged to be a part of the Colorado River Indian Reservation, to eject the persons in possession of said lands, and to recover damages for the withholding of possession of said lands from the Colorado River Indian Tribes.

FINDINGS OF FACT

1. Title to the lands in the area in dispute was originally acquired by the United States under the Treaty of Guadalupe Hidalgo. The Colorado River Indian Reservation was originally established and the lands therein defined by Con-

gress by the Act of March 3, 1865 (13 Stat. 559). Subsequently, the lands included therein were modified and further defined by Executive Orders of November 22, 1873, November 16, 1874, May 15, 1876, and November 22, 1915. The Act of April 30, 1964 (78 Stat. 188) defined the Colorado River Indian Reservation as constituting the reservation for Indian use established by said Act of March 3, 1865, as modified and further defined by said Executive Orders of November 22, 1873, November 16, 1874, May 15, 1876 and November 22, 1915.

2. The Executive Order of May 15, 1876 (admitted in evidence herein as Exhibit 90) purported to include within said reservation the entire bed of the Colorado River; however, prior thereto by the Act of September 9, 1850 (9 Stat. 452), Congress admitted California to statehood, and the eastern boundary of the state of California at that time, as pertinent to this lawsuit, was acknowledged by Congress to be the mid-line of the Colorado River. The Act of September 9, 1850, admitted California on an equal footing with the original States; hence, because the Colorado River has been held to be navigable in this reach by the United States Supreme Court, California obtained title to the west one-half of the river bed on said date. Accordingly, the Executive Order of May 15, 1876, effectively reserved to the Colorado River Indian Tribes only the east half of the bed of the Colorado River, and to the extent that said Order purported to include within the reservation the west half of the bed of the river, it was ineffective.

3. The lands to which the United States seeks by this action to quiet its title are described generally as follows:

Fractional Sections 3, 4, 8, 9, 10, 11, 14, 15, 16, 17 and 21, Township 4 North, Range 22 West, Gila and Salt

River Base and Meridan, as shown on the plat of survey accepted July 9, 1974;

all of said portions of Township 4 North, Range 22 West, G.&S.R.B.&M. are now, and ever since the Executive Order of May 15, 1876 have been, a part of the Colorado River Indian Reservation.

4. Said Township 4 North (Township 4 North, Range 22 West, G.&S.R.B.&M.), and other townships within the Colorado River Indian Reservation were originally surveyed in 1912 on behalf of the General Land Office by Guy P. Harrington, a U.S. surveyor, and his survey is in evidence in this action as Exhibit 7. Said Township 4 North as surveyed and certain accretions thereto constitute the lands described in paragraph 3.

5. During the interval between the General Land Office (Harrington) survey of 1912 and the latter part of 1919, the Colorado River in the reach of the river adjacent to said Township 4 North moved generally in a westerly direction by a process of erosion and accretion; the configuration of the river in said area in 1919 resembled a large loop, and was referred to locally as the Olive Lake Bend.

6. To the extent that the land in the 1919 Olive Lake Bend easterly of the Colorado River had not been surveyed by Harrington, it was land that had accreted to Township 4 North, Range 22 West, G.&S.R.B.&M., as surveyed in 1912.

7. The location of the Colorado River in the reach of the river adjacent to said Township 4 North and in the

configuration of the Olive Lake Bend was recorded in a survey in December 1919 by C. A. Engle, a civil engineer, employed by the Indian Service. The Engle survey and the survey notes with respect thereto are in evidence in this action as Exhibits 25 and 26 respectively.

8. In the early part of 1920, the Palo Verde Mutual Water Co. applied to and received permission from the United States Department of the Interior to construct, and it did construct, a cut-off channel across the neck of the Olive Lake Bend on lands wholly within the Colorado River Indian Reservation. The purpose of the cut-off was to divert the river through the cut and thereby eliminate a threat posed by the river of destroying the irrigation system and farm lands in the Palo Verde Valley.

9. By July, 1920, the main stream of the Colorado River was flowing through the cut-off constructed by the Palo Verde Mutual Water Co., and by 1921 the entire river was flowing through the cut-off. Thereafter the main stream of the river did not ever return to or flow through its former channel known as the Olive Lake Bend.

10. The diversion of the Colorado River from its course around the loop known as the Olive Lake Bend into and through the cut-off constructed across the neck of the bend by the Palo Verde Mutual Water Co. constituted an avulsive change in the course of the Colorado River.

11. Immediately prior to said avulsive change, the course and bed of the Colorado River was the westernmost of the two channels shown on the Engle maps, Exhibits 25 and 27, which position of the river is supported by the Yost sketch map, Exhibit 28, labeled "Colorado River 1920".

12. At the time of said avulsive change in the course of the river referred in Finding 10 above, the median line of the channel it had abandoned is properly defined in Exhibit 9, which is in evidence, the same being entitled "Township 4 North, Range 22 West, of the Gila and Salt River Meridian, Arizona and California. Dependent Resurvey and Accretion Survey." The traverse of said median line is as described in said Exhibit 9.

13. The median line referred to in the next preceding finding constitutes, in part, the western boundary of the Colorado River Indian Reservation.

14. With respect to the lands shown on said Exhibit 9, as lying between the Colorado River as shown on Exhibit 9 and the median line as shown and described on Exhibit 9, said lands, comprising about 1912 acres, are owned by the United States of America in trust for the benefit of the Colorado River Indian Tribes. No part of said lands have ever been disposed of by the United States of America by patent or otherwise.

15. All that part of the abandoned bed of the Colorado River lying westerly of the median line described on Exhibit 9, as of the time the river commenced flowing through the cut-off constructed by the Palo Verde Mutual Water Co. is owned by the State of California.

16. All defendants, except the State of California and those defendants listed hereafter in Finding 23, have wrongfully occupied and do now wrongfully occupy the lands described in Finding No. 14, and have unlawfully withheld and do now unlawfully withhold possession thereof from the plaintiff contrary to its title and right to possession.

17. All defendants, except the State of California and those defendants listed hereafter in Finding 23, have failed and refused to compensate plaintiff for their unlawful use and occupancy of said lands, and plaintiff is entitled to damages therefor.

18. The fair rental value for the unlawful use and occupancy of the lands occupied by the Johns Group of defendants is the sum of $44,500.

19. The plaintiff and the defendant Palo Verde Irrigation District have agreed that the fair rental value for the unlawful use and occupancy of 38 acres of lands traversed by the District's duplicate main canal is $9,800.

20. The fair rental value for the unlawful use and occupancy of the lands occupied by the Riverview Farm and Cattle Company Group of defendants is $330,000; however, said damages are off-set in their entirety by enhancement of the value of the land occupied by said defendants, as a result of the unamortized value of good faith improvements made by said defendants.

21. The defendants within the Johns Group of defendants are:

Jared C. John, Jr., and Alice B. John, his wife;

Rancho Del Juan, Inc., an Arizona corporation; and Neil John, individually and as President of Rancho Del Juan Inc.

22. The defendants within the Riverview Farm and Cattle Company Group of defendants are:

Gerald Aranson and Jan Furst Aranson, his wife;

Blythe Land Properties, a Limited Partnership;

Joe B. Finley, individually and as President of Western Cattle Feeders, and Florence S. Finley, his wife;

Murray M. Hausner and Leonore Hausner, his wife;

Edward Meltzer and Frieda A. Meltzer, his wife;

Arthur Ourieff and Verni Ourieff, his wife;

Jack M. Ostrow;

Prima Rosa Land and Cattle Company, a partnership;

Arthur I. Berman;

Martin A. Levy;

Western Cattle Feeders, a California corporation;

Palo Verde Irrigation District, a political subdivision of the State of California;

Virgil L. Jones, individually and as President of Board of Trustees of Palo Verde Irrigation District;

C. P. Richins and Sons, a Partnership;

Charles P. Richins, Jr., and Agnes Richins, his wife;

Norman E. Richins and Winifred Richins, his wife;

Lawrence D. Richins, individually and as President of Sunrise Farms and as President of Riverview Farm and Tillage Company and Barbara Richins, his wife;

Riverview Farm and Cattle Company, a Partnership;

Arnold M. Travis and Joan D. Travis, his wife;

Riverview Land Company, a California corporation;

C. P. Richins, individually and as President of Riverview Land Company;

Sunrise Farms, a California corporation;

Harry B. Swerdlow;

Travis Farms, a Partnership;

Joe B. Finley, Jr., and Mary C. Finley, his wife;

R. W. Bilbo and Kathryn S. Bilbo, his wife;

23. The following defendants have no interest in the lands which are the subject of this action:

Arizona Farmers Production Credit Association;

The Federal Land Bank of Berkeley;

Northwestern Mutual Life Insurance Company,

Desert Ginning Company, Inc., an Arizona corporation;

Los Angeles Period Furniture Company, Inc.,

Julius Fligelman;

Bank of America National Trust and Savings Association.

Any conclusion of law erroneously included within the foregoing findings of fact shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

24. This court has subject matter and venue jurisdiction of these proceedings.

25. The lands described in Finding 14 were a part of the Colorado River Indian Reservation as confirmed by the Act of April 30, 1964 (78 Stat. 188)

26. In case of an avulsive change in the channel of a river which constitutes a boundary, the boundary remains in the abandoned channel as it existed immediately prior to the avulsive change.

27. The 1920 cut-off constituted an avulsive change in the channel of the Colorado River and worked no change in the western boundary of the Colorado River Indian Reservation.

28. Plaintiff in its capacity as trustee for the benefit of the Colorado River Indian Tribes is now and has at all times been the owner of and entitled to possession, to the exclusion of the defendants, of Township 4 North, Range 22 West, of the Gila and Salt River Meridian, Arizona and California, as said township is laid out and depicted in that certain plat of survey consisting of two sheets accepted July 9, 1974, and officially filed in the offices of the Bureau of Land Management of the Department of the Interior on September 25, 1974, the same being entitled "Township 4 North, Range 22 West, of the Gila and Salt River Meridian, Arizona and California. Dependent Resurvey and Accretion Survey", a copy of said plat having been received in evidence in this action designated as Exhibit 9.

29. Plaintiff is entitled to have judgment quieting its title to the lands described in paragraph 28 above, as against all defendants and to have judgment that the boundary line between the plaintiff's lands and the land owned by the State of California in the abandoned river bed of the Colorado River is the traverse of the median line of said abandoned channel as shown and described on said plat of survey described in paragraph 28 above.

30. Plaintiff is entitled to have judgment against all defendants, except the State of California, that said defendants have wrongfully occupied and do now wrongfully occupy all lands lying between the Colorado River as shown on the plat of survey described in paragraph 28 above and the median line of said abandoned channel as shown and described on said plat of survey.

31. By reason of such wrongful and unlawful withholding of possession from plaintiff, plaintiff is entitled to have and recover from the Johns Group of defendants the sum of $44,500, and from the defendant Palo Verde Irrigation District the sum of $9,800.

Any finding of fact erroneously included within the foregoing conclusions of law shall be deemed a finding of fact.

DATED: This 10th day of February, 1977.

/s/ MANUEL L. REAL
United States District Judge

Presented by:
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